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# NOTES OF RECENT VIRGINIA DECISIONS.*

POPE *v.* TRANSPARENT ICE COMPANY. Appeal from a decree of the Circuit Court of the County of Roanoke. *Keith*, P.

*Application of Payments.* This is an interesting case on the subject of the application of payments. The Court holds that when the debtor makes a payment he has the right to direct the application. If he fails to exercise his right, the creditor may make the application; but, if neither does it, it is the duty of the court to so apply the payment as sound discretion may, under the circumstances, dictate, and that in the exercise of this discretion, where there is no other fact or circumstance upon which the court can lay hold to guide and direct its discretion, the payment should be applied to that debt which is least secured. The Court further holds that, in the exercise of this discretion, the interest of the debtor and creditor are alone to be considered—sureties having no advantage in this particular over others.

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EXCHANGE BUILDING AND INVESTMENT COMPANY *v.* BAYLESS AND OTHERS. Appeal from a decree of the Circuit Court of the City of Roanoke. *Harrison*, J.

*Subrogation.* The Court, after stating the general doctrine of subrogation, holds that where a debt is secured by a deed of trust, and the debtor afterwards gives a negotiable note, with accommodation endorsers, as additional security for a part of the debt, and the endorsers pay the note, they cannot be subrogated to the rights of the creditor to his detriment in the collection of the residue of his debt. The Court further holds that, although an extension of time given to the principal without the consent of the surety, in pursuance of a binding legal contract, will discharge the surety, yet, if in the contract of extension all the rights and remedies of the surety are preserved unimpaired, he will not be discharged.

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CARNEAL *v.* LYNCH AND OTHERS.—Appeal from a decree of the Chancery Court of the City of Richmond. *Harrison*, J.

*Partition.* In this case it is held that a life tenant of one undivided moiety of a parcel of land and the fee simple owners of the other undivided moiety, whose estates accrue under the same title but at different times, are tenants in common of the land, and that such life tenant may, under sections 2432 and 2562 of the Code, maintain a suit for partition against those who own the estate in remainder of the moiety of which he is life tenant, whether they are *in esse* or not, and the fee simple owners of the other moiety, and if the property is not susceptible of division in kind, may have a sale and division of the proceeds.

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* At the January term of the Court of Appeals, twenty-five cases were decided, and thirteen of these were directed by the Court to be reported. Five of them are reported in full and the following notes made of the remaining eight. Of the cases decided at the March term and ordered to be reported, some will be reported in full and notes made of the others in the June number of the REGISTER.